

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

IN RE:	)	
WHITTENBURG PROPERTIES INC.	)	CHAPTER 11
Debtor.	)	CASE NO. 11-40129
WHITTENBURG PROPERTIES INC.	)	
MOVANT,	)	CONTESTED MATTER
VS.	)	
USB AG, NEW YORK BRANCH AND RUSHMORE LOAN MANAGEMENT SERVICES, LLC	)	
RESPONDENT.	)	

**NOTICE OF HEARING ON DEBTOR'S MOTION TO USE CASH REGARDING 120 WATERFORD PROPERTY**

PLEASE TAKE NOTICE that on January 19, 2011 Debtor filed a Motion Requesting Order Authorizing the Use of Cash Collateral Regarding 120 Waterford Property ("Motion").

**PLEASE TAKE FURTHER NOTICE that the Court shall hold a hearing on the Motion on the 2nd day of February, 2011 at 9:25 o'clock a.m., in Courtroom 342, U.S. Courthouse, 600 East First Street, Rome, GA, 30161.**

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk's Office is Clerk, Room 339, Federal Building, 600 East First Street, Rome, Georgia 30161-3187. You must also mail a copy of your response to the undersigned at the address stated below.

This 19th day of January, 2011.

**JONES & WALDEN, LLC**

*/s/ Leslie Pineyro*  
Leslie Pineyro  
Georgia Bar No. 969800  
Attorneys for Debtor  
21 Eighth Street, NE  
Atlanta, Georgia 30309  
(404) 564-9300

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RUSHMORE LOAN MANAGEMENT	)	
SERVICES, LLC	)	
	)	
<u>RESPONDENT.</u>	)	
	)	

**MOTION REQUESTING ENTRY OF ORDER AUTHORIZING THE USE OF CASH  
COLLATERAL REGARDING 120 WATERFORD PROPERTY**

COMES NOW Whittenburg Properties, Inc. ("Debtor") and hereby files this "Motion Requesting Entry of Order Authorizing the Use of Cash Collateral Regarding 120 Waterford Property" (the "Motion"). In support of the Motion, Debtor shows the Court as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicate for the relief requested herein is 11 U.S.C. §§ 105(a), and 363.

**Background**

2. On January 19, 2011 (the "Petition Date"), the Debtor filed a voluntary

petition for relief under Chapter 11 of Title 11 of the United States Code (as amended, modified, or supplemented the “Bankruptcy Code”).

3. Debtor is a Georgia corporation who owns rental property (the “Business”) including Debtor’s real property located at 120 Waterford Drive, Calhoun, GA (referred to herein as the “120 Waterford Drive Property”). The 120 Waterford Drive Property is managed by W. Hoyt Whittenburg and Linda Whittenburg.

4. The 120 Waterford Drive Property generates approximately \$1,606.00 in monthly rental income (the “120 Waterford Drive Property Rental Income”).

5. Pursuant to Bankruptcy Code Sections 1107 and 1108, Debtor continues to operate its business as a debtor-in-possession. Debtor is currently a debtor-in-possession and seeking to restructure and reorganize and is taking any and all actions necessary to preserve, protect, and maximize the value of the estate and effectively reorganize.

6. In order to effectively reorganize, Debtor must have access to cash to pay its operating expenses in connection with the Business. If Debtor does not have the authority to use its available cash to pay operating expenses of the Business, including utilities and general maintenance, Debtor’s tenants will vacate the 120 Waterford Drive Property and the going concern value of the Business will be significantly harmed and the estate and creditors will be negatively affected.

### Liens

7. Upon information and belief, USB AF, New York Branch and/or Rushmore Loan Management Services (the “Lender(s)”) asserts a lien upon Debtor’s 120 Waterford Drive Property pursuant to an alleged security deed (the “Security Deed”).

Additionally, Lender(s) may assert an interest in the 120 Waterford Drive Property Rental Income which constitutes cash collateral as defined in §363 of the Bankruptcy Code pursuant to the assignment of rents provision in the Security Deed. Debtor files this Motion requesting permission to use all cash collateral generated by the Bank of the Ozarks Rental Properties including the 120 Waterford Drive Property Rental Income. Based upon a review of records and financing statements, it does not appear that any other party asserts an interest in Debtor's cash collateral generated from the Business. The filing of this Motion shall not be deemed a waiver of and Debtor expressly reserves any and all of its rights, remedies and defenses under the Bankruptcy Code, including, but not limited to, its rights to object to and dispute Lender(s)' asserted liens, security interests and debts.

**Relief Requested**

8. By this Motion, Debtor requests that the Court enter an order authorizing Debtor's use of cash collateral generated from the 120 Waterford Drive Property.

**Basis for Relief**

9. Section 363(c)(2) provides that a debtor in possession may not use cash collateral unless an entity that has an interest in such cash collateral consents or the court approves the use of such cash collateral. Section 363(p) provides that at a hearing on the use of cash collateral, the entity asserting an interest in the cash collateral has the burden of proof on the issue of the validity, priority, or extent of such interest, and the debtor-in-possession has the burden of proof on the issue of adequate

protection. Rule 4001(b)(2) provides that the Court may not hold a final hearing on a motion to use cash collateral earlier than 14 days after service of the motion, but may authorize the use of cash collateral prior to a final hearing as necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

10. Debtor requests the Court enter an Order authorizing Debtor to use cash collateral generated from the 120 Waterford Property: (a) in accordance with the budget attached hereto as Exhibit "A" the line items of which Debtor may modify by no more than ten percent (10%) except that Debtor may pay the actual amount owed to any utility or insurance company, and (b) for payment of U.S. Trustee fees, or (c) for other matters pursuant to orders entered by this Court after appropriate notice and hearing.

11. Debtor has an immediate need to continue the operation of the Business and to protect the interests of the estate. Without the use of cash collateral and the ability to operate, Debtor will not be able to retain its tenants which are necessary to the continuity of Debtor's operations and effective reorganization.

12. The entry of an Order granting Debtor's Motion to use cash collateral generated by the 120 Waterford Property will minimize disruption of the Debtor's Business and is in the best interests of Debtor's estate and its creditors. Therefore, it is in the interest of no one for any interruption to occur during Debtor's reorganization.

13. Notice pursuant to Federal Rule of Bankruptcy Procedure 4001(b) is being sent to all parties required by such rule. Specifically, notice of this Motion and any

hearing thereon shall be provided to each Respondent, the United States Trustee and the Debtor's creditors.

14. Debtor requests that the Court approve the expenditures listed in Exhibit "A" which are reasonably necessary for the continued operation of Debtor's business affairs.

WHEREFORE, for all of the above reasons, Debtor requests that the Court:

- (a) authorize the Debtor to pay the expenses and other expenditures reasonably necessary for the continued operation of the Debtor's Business to avoid immediate and irreparable harm to the estate;
- (b) grant the Debtor such other and further relief as may be just and equitable.

RESPECTFULLY SUBMITTED this 19th day of January, 2011.

**JONES & WALDEN, LLC**  
s/ Leslie M. Pineyro  
Leslie M. Pineyro  
Georgia Bar No. 969800  
Leon S. Jones  
Georgia Bar No. 003980  
Attorneys for Debtor  
21 Eighth Street, NE  
Atlanta, Georgia 30309  
(404) 564-9300  
(404) 564-9301 Facsimile  
lpineyro@joneswalden.com  
ljones@joneswalden.com

**"Exhibit A"**

**120 Waterford**

Income \$500.00

Expenses

taxes due 1299.35 \$42.26

Insurance \$0.00

Repairs Labor \$54.00

Management at 10% of

Income \$50.00

HOA \$80.00

\$226.26

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RUSHMORE LOAN MANAGEMENT	)	
SERVICES, LLC	)	
<u>RESPONDENT.</u>	)	
	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing "Motion Requesting Entry of Interim Order Authorizing the Use of Cash Collateral Regarding 120 Waterford Property" to be served on all parties on the attached matrix via United States mail with sufficient postage affixed thereto and via the method indicated on the parties below:

Via Certified Mail

Corporation Service Company, Registered Agent  
Rushmore Loan Management Services LLC  
40 TECHNOLOGY PARKWAY SOUTH, SUITE #300  
NORCROSS GA 30092

Bank of the Ozarks/Unity Bank  
950 Frak J Harris Pkwy  
Cartersville, GA 30120

Via Email

United States Trustee  
75 Spring St., S.W., Suite 362  
Atlanta, GA 30303  
[Martin.P.Ochs@usdoj.gov](mailto:Martin.P.Ochs@usdoj.gov)

Calhoun Times  
215 W Line St  
Calhoun, GA 30701

David Scoggins, CPA  
Winter & Scoggins  
208 N Wall St  
Calhoun, GA 30703

Rushmore Loan Management Services  
PO Box 52708  
Irvine, CA 92619

Georgia Bank & Trust  
135 WC Bryant Parkway  
Calhoun, GA 30701

Rushmore Loan Management Services  
Customer Services  
PO Box 55004  
Irvin, CA 92619-5004

Gordon County Tax Assessor  
101 Piedmont St, 1st FL  
Calhoun, GA 30701

USB AG  
New York Branch  
515 Irvine Center Drive  
Irvine, CA 92618

Linda Whittenburg  
PO Box1406  
Calhoun, GA 30703

McKinnon Satellite  
248 Richardson Rd  
Calhoun, GA 30701

Regions Bank  
208 N Wall St  
Calhoun, GA 30701

Sherwin Williams  
921 S Wall St  
Calhoun, GA 30701

TJ's Office Supply  
103 Court St  
Calhoun, GA 30701

Burr & Forman, LLP  
171 17th St  
Bryan Glover  
Atlanta, GA 30363

Taylor English Duma LLLP  
1600 Parkwood Circle Ste 400  
Attn: John Richard  
Atlanta, GA 30339

Bailey & Govignon  
112 North Wall Street  
P.O. Box  
Calhoun, GA 30703-1089

Prodovis Mortgage  
600 Six Flags Drive #250  
Arlington, TX 76011

W. Hoyt Whittenburg  
P.O. Box 1539  
Calhoun, GA 30703

This 19th day of January, 2011.

*s/ Leslie M. Pineyro*

Leslie M. Pineyro  
Georgia Bar No. 969800  
Attorneys for Debtor  
21 Eighth Street, NE  
Atlanta, Georgia 30309